1836

(Courts)

File No. 2. Sh. 1.

Abolition of Institution Fees on Civil

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To

The Secretary to the Commissioner for the Government of the Territories of the Rajah of Mysore

Bangalore

Dated 12 November 1836

Acknowledging the Circular of 25th Sept: last & submitting particulars of the effects resulted from the abolition of the Institution of Fees on Civil Suits

To

The Secretary to the Commissioner for the
Government of the Territories of the Rajah
of Mysore
Bangalore

Sir,

I have the honor to acknowledge the receipt of your Circular of the 25th. September last, and as therein directed, to submit the following particulars with regard to the effects which have resulted from the abolition of Institution Fees on Civil Suits.

2 The first point on which information is required by the Commissioner, is, as to the increase of litigation which has followed the measure, and the question must beyond all doubt be answered in the affirmative: in proof of which, the following is an abstract

of

of the Civil Suits instituted and decided in the whole of the Talooks of the last Ashtagram Foujdarry during the 3 months ending in June 1834, before the abolition of Fees; and in June 1835, since they have ceased to be levied.

Abstract No. 1, of Civil Suits filed

Period	No. of Civil Suits Instituted	Decided	Plaints Struck off	Do. Withdrawn and Dismissed	Proportion of cases disproved
3 Months ending in June 1834	61	77	40	37	1. in 2 1/2,
—— June 1835	247	138	64	74	1. in 1 32/37.

3 It will be seen from the above, that the number of Suits has increased from 61 to 247, or as 1. to 20ths nearly to 1.

4 But further to illustrate this part of the question, an Abstract of the same nature, shewing the Cases filed and decided in the Ashtagram Fouj: Cutcherry, and the Talooks of Mysore and Seringapatam in the half year, immediately preceding the abolition of Fees, and the Moonsiffs

Court

Court and the same Talooks in the half Year succeeding that period, or from April to September 1834/35 respectively, is likewise inserted.

Abstract No 2, of Original Suits. —

	In the half year ending in September 1834 before abolition of Fees				In the half year ending in September 1835 since the abolition of Fees				
	Instituted	Decided			Instituted	Decided			Remarks
		Plaints Decrees	Dismissed Withdrawn & Struck off	Total		Plaints Decrees	Dismissed Withdrawn & Struck off	Total	
Allagram Foujdarry Court & Moonsiffs Cts	10	14	11	25	* 258	42	55	97	* Riots Cases 8
Seringapatam Talook	15	15	17	32	53	20	10	41	
Alysoor Talook	35	15	14	29	* 98	38	8	46	* — do — do 6
Total	60	44	42	86	409	102	82	184	
Deduct Cases above 2000 Rupees in the Moonsiffs Court					29				
Remaining					380				

5 The Court of the Moonsiffs, and of the five Talooks above enumerated, have been selected from the rest of the Division for Report; because as will hereafter be noticed, from the Comparatively greater proportion of the Trading population within their Jurisdiction, they have been the most sensibly affected

affected by the cessation of Fees, and will consequently exhibit more distinctly the results of such cessation. It will appear from the above abstract, that the increase of Causes within their Courts, (after deducting 29 Cases in the Moonsiffs Court, which being above 2000 Rupees, would not have been cognizable by the late Foujdar,) has been from 60 to 384; or, that the Suits filed, have increased in the proportion of 6 1/3rd to 1.

6 But what may appear the most material Consideration in this Division on the Subject is the Justice of the plaints which have so abundantly multiplied; as upon this may be grounded a Conclusion as the practical benefits, or practical evils of the measure, as having either no more than met the public demand for Justice, which had been suppressed by the levy of Fees on the one hand; or, as having encouraged a wanton Spirit of Contention on the other—

7 It is shewn by both the above

Abstracts

Abstracts, in which a discrimination has been made, between the Suits decided for, or against the plaintiff, that the number of Cases non-suited, under which head are included also Suits withdrawn and dismissed as frivolous, has been in the first Quarter 37 in 77; and in the second 74 in 138; and in the first half year, 42 in 86; and in the second 82 in 184.

8. The proportion of non-suits has not therefore been very Considerably altered during the two periods; and arguing on the above premises only, it might be presumed that the amount of litigation, though so greatly augmented, has not exceeded the real wants of the Community

9 But such a Construction, however Specious, is I am persuaded, erroneous; in support of which, I venture to submit the following observations.

10 The whole number of Civil Suits, instituted in all the Tillahs under the Presidency of Fort Saint George in the first six months of 1834, was,

it is believed, 2.551, while in the Ashtagram Moonsiff's Court alone of this Division, it will be seen by the Abstract No. 2, that the number of Suits instituted during the Six Months ending in September 1835, have amounted to 258, or rather more than 1/10th of the above number. The Cases are supposed to be parallel, in so far as the Jurisdiction both of the Tillakis and Moonsiffs Court for the period under Consideration, was similar; and it is scarcely possible to credit, that a Court, the reins of whose authority is so limited, and exercised in a province in which the mercantile transactions are so contracted, when Compared with many parts of the Madras Presidency, should furnish legitimate Causes of litigation, bearing a proportion so large as that just mentioned.

Minute of Sir Tho.s Munro, pag 377, Vol. 3rd

If it be asked, what redress the plaintiffs in the Suits noted in the Abstracts, as proved and decided in their favor, and which so much exceed the whole number instituted in the Year preceding

preceding, would have obtained under the previ=ous System of Fees, it may be answered that the defendants would most probably have paid their debts without driving their opponents to a Court of Law. — To explain this, it may be stated, that the debtor has now a positive interest in refusing payment; for he has first a remote, but still a real chance of the failure on the part of the plaintiff to sub=stantiate a just debt. 2ndly, A chance of some technical irregularity in the Proceed=ings on which to ground an Appeal, even in the event of the decision against him; and 3rdly, The absolute certainty of the delay necessary before the Case can be heard in Courts wherein arrears are begining so rapidly to accumulate; and of securing a Decree at a rate of Interest, inferior to that generally given by natives, in their private transactions with each other.

12 It will be recollected, that under the former System, the Fees were always charged to the loser of the Suit-

and-

and were therefore, in fact, a tax on the party withholding, and not on the party seeking Justice.—

13 It may be said, that this argument pre-supposes a dishonest intention on the part of the defendant in all these Suits; but though apparently harsh, this pre-supposition could scarcely be proved untrue. Few men of real respectability in this part of the Country, have overcome their prejudice (and prejudices must be Considered in legislating for the advantage of parties entertaining them,) against Coming into a Court of Law, where they are placed on a level with the meanest ranks of Society

14 The Cases having been Considered, as to the unfair advantages which a dishonest debtor derives under the present System, it appears that however benevolent in theory, its result in practice must be rather to encourage insolvency for public Proceedings at Law, than to inculcate principles of Equity in private

private transactions. There is yet another evil to be noticed in the gratuitous means of annoyance, which are thus placed in the hands of the disreputable plaintiff against the higher Classes of Native Society. The disinclination of Men of Family to come into a Court of Law is so great, that they will sometimes abandon their just dues, rather than Commence a Suit against one of inferior rank; and yet they are now exposed, not only to the real inconveniences, but to the deeply felt indignity of being Compelled to answer in person, or to the expence of a Vakeel to reply by proxy to a plaint, which is Commonly drawn up in terms defamatory and offensive, in proportion as it is false. Indeed the abstract number of unsuccessful Cases which have been above given, and which shew that no less than 156 Individuals within the periods referred to have undergone the annoyance of being sued for groundless debts, must be a serious Counterbalance to the positive good, which

may

may under the most favorable Construction, be said to have accrued from the facility of access to legal tribunals -

15 The most important view of the measure, is, however, its moral tendency. The evils in this point of view which may be apprehended, are first, the private animosity inseparable from legal proceedings in any State of Society; and Secondly, One which is peculiar to the State of Society in this Country, viz^t a temptation to support a ~~Declaration~~ by false Witnesses, who I grieve to say, would be procurable in Mysore at a less Cost than even the Institution I Pres recently exacted - The testimony of such Witnesses may, it is true, be set aside by a Punchayet, who after some labor may discover their want of veracity; but it is much more difficult to prove a Case of perjury, than to arrive at the presumption of its existence; and even if one out of ten Cases Could be Convicted and

punished

punished, the escape of the remaining nine would be a triumph to guilt, in effect and tendency most deplorable.

16 But besides the moral evil, there is yet another Consequence to be apprehended, and that is, that the Courts will be so overloaded with suits as to be unequal to their disposal; or in other words, either the Public Revenue must be burdened with an increased Judicial Establishment, proportioned to the increasing rage for Litigation, the supervision of which will become every day more difficult; or for the sake of holding out a delusive prospect of free Justice to all who seek it, the Suitor who has in reality every right of Justice on his side, must be denied it perhaps for one or more years until the suits before him on file (whose falsehood can only be detected on inquiry,) are all decided; and after that, until every experiment of Clamour and misrepresentation in the Court of Appeal has been

exhausted

exhausted-

17 This has, in some degree already occurred in the Town of Mysore, where a large proportion of the Complaints, both against the Moonsiffs and the Amildar's Courts are on account of delays, which have become daily more unavoidable-

18 With regard to the remaining question in your Circular, "whether Appeals have been more frequently decided in favor of, or against the original Decrees,"- there have been 17 Appeals decided in the Pagoda Moonsiffs Court, of which in 9 Cases, the original Decrees of the Amildar have been Confirmed- In the Superintendent's Court, 4 Appeals and 3 Special Appeals have been decided, and Decrees in 2 other Special Appeal Cases, are now under preparation; in the whole of which, the Original Decrees have been unaltered-

19 In conclusion, two other arguments may be raised in favor of the former System of the levy of Fees-

Fees. The first, that the Case of the honest plaintiff, whose poverty precluded him from the payment of Fees, was fully provided for by the Pauper Clause. and the second, that the Ryots or that class of inhabitants who stand in the most important relation to Government are scarcely Concerned in the present question; their mutual transactions being of so simple a nature, as rarely to require the intervention of more than a Common Arbitration, and seldom exceeding the amount which Fees were never charged, while in their Concerns with the Sowcars or richer Farmers, who advance them Grain or Money, recourse to a Court of Law, is out of the question. A Ryot who denied a debt of this nature, would starve in the first bad season, as no one in the Country around, would supply the necessities of one who disputed a transaction, in which the most scrupulous punctuality universally prevails. The parties

Chiefly

chiefly interested in the community, are therefore (as shewn by the Remarks in the Abstract No. 2, in which the Ryots Cases amount to no more than 11, out of 356,) Merchants and Tradesmen, who are in general better able to ~~meet the~~ bear the burden of Law Expences, moderate as they were under the late Regulation

20. The Monsiff's Court at Baloor, has not been taken into account, as the Civil business in a district like Hungirabad, where agricultural Cases so much preponderate, is extremely trifling; the Civil Suits in the Foujdary Court in the year preceding the abolition of Fees, having amounted to 3 or 4, and the whole number filed in the next, only to 17.

I have the honor to be
Sir
Your Most Obedient Servant
(Signed) S. Chalmers
Superintendent.

Superintendent's Office
Telegram Division
Mysore
12th November 1835